

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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SEP 3 1993

FCC - MAIL ROOM

In the Matter of)
Petition for Rulemaking)
to Determine the Terms)
and Conditions Under Which)
Tier I LECs Should Be)
Permitted to Provide)
InterLATA Telecommunication)
Services)

RM-8303

COMMENTS OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Pennsylvania Public Utility Commission ("PaPUC") is the state agency responsible for regulating all public utilities, including telephone companies, within the Commonwealth of Pennsylvania. As such, it has a significant interest in the regulation of telecommunication services at both the interstate and intrastate levels. In pursuit of that interest, the PaPUC offers the following comments pursuant to the comment cycle established by the Federal Communications Commission ("FCC") in the above-captioned matter.

I. Introduction

Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group and Southwestern Bell Telephone Corporation (collectively "the BOCs") request the FCC, in their Petition for Rulemaking ("Petition"), to find BOC provision of interLATA services in the public interest and to determine the appropriate terms and conditions for BOC participation in the

interLATA telecommunications services market.¹

The PaPUC shares both the FCC and BOCs' goal of open entry and competition in the interexchange telecommunications market. The PaPUC agrees that as a general proposition, increased competition may result in lower prices, the development of new services and innovative product packaging, which developments are in the public interest. The PaPUC also believes that as with interexchange service in prior years, technology along with recent regulatory developments at both the state and federal levels will serve to encourage competition in the local exchange.²

¹Presently the BOCs are prohibited from providing interexchange services under a 1982 consent decree ("decree"). See, United States v. American Telephone & Telegraph Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983). Under Section VII of the decree the BOCs may petition the District Court of the District of Columbia ("District Court") for modification or waiver of decree restrictions. The BOCs presently have numerous petitions for waiver of the interLATA restriction pending before the Department of Justice and the District Court, in conjunction with the provision of specific services. Under Section VIII(C) of the decree the District will remove a restriction "upon a showing by the petitioning BOC that there is no substantial possibility that it [the BOC] could use its monopoly power to impede competition in the market it seeks to enter." Id. at 231.

²However, since many of the FCC's pro-competitive enactments have not yet taken effect and the states have yet to address some of these issues within their respective jurisdictions, the degree of actual competition cannot be predicted with any certainty at this time. See, Expanded Interconnection with Local Telephone Company Facilities, (CC Docket No. 91-141), 7 FCC Rcd 7369 (1992), petitions for review pending Bell Atlantic Telephone Co., D.C. Circuit No. 92-1619 (and consolidated cases), filed November 25, 1992; Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 7740 (1992); In the Matter of Transport Rate Structure and Pricing, Petition for Waiver of the Transport Rules filed by GTE Service Corporation, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-213, 7 FCC Rcd 7006 (1992).

Additionally, recent tariff filings with the FCC by several major interexchange providers incorporating price increases for consumers, do raise concerns about the competitiveness of the current interexchange market.

The PaPUC's recognition of these factors is balanced, however, by the following factors. First, while the Petition relies upon primarily two factors, the degree of competition in the current interexchange and local service markets, to support a finding that BOC provision of interLATA services is in the public interest, the PaPUC submits that such a public interest finding would most appropriately be made upon the basis of a comprehensive record, as discussed more fully in Section III of these Comments.

Second, the PaPUC believes that existing regulatory safeguards may be inadequate to accommodate BOC entry at this time. While the purpose of the BOC's Petition is to establish the appropriate safeguards, many of the existing safeguards which the BOCs urge the FCC simply "transfer" to BOC provision of interLATA services, have not been adequately tested to ensure their overall effectiveness under their current applications.³ Relying upon these safeguards at this time to prevent the same sort of anti-competitive and discriminatory behavior which culminated in the 1982 decree, therefore, would be premature.

Third, the PaPUC believes the adoption of safeguards at

³See, In re Computer III Remand Proceedings, 6 FCC Rcd 7571; Policy and Rules Concerning Rates for Dominant Carriers (CC Docket No. 87-313), 5 FCC Rcd 6786 (1990), on recon., 6 FCC Rcd 2637 (1991), aff'd, National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

this time would be premature in other respects. As discussed more fully in Section I of these Comments, the FCC prior to considering the BOC Petition, should first undertake an independent review of its policies in other areas, including access charges and the universal service funding mechanism, to ensure that the development of competition can be accomplished in a fair and reasonable manner while equitably balancing the needs of all parties.

While the PaPUC opposes the rulemaking at this time for the reasons discussed above, the PaPUC believes that the development of safeguards for BOC interLATA participation may be necessary at some time in the future. Therefore, at such time as the FCC may decide to consider the Petition, the PaPUC would recommend that the FCC use the three-part process discussed in Section III, infra., which the PaPUC believes would appropriately balance the interests and concerns of all parties. The process proposed by the PaPUC would also provide for the fullest level of input by all interested parties which the PaPUC believes is important.

II. The FCC Should First Undertake An Independent Review Of Other Policies To Accommodate An Increasingly Competitive Environment.

The FCC should first address its current rules and policies relating to access charges and the universal service funding mechanism, prior to establishing safeguards for BOC participation in the interLATA market. The PaPUC believes these issues should be addressed independent of this proceeding and in the context of the larger issues which they raise. The resolution

of these issues will necessarily have an impact upon the rules eventually developed by the FCC for BOC interLATA participation.

The Ameritech plan underscores the interrelationship of these issues and the need to independently resolve them prior to FCC action on both the Ameritech plan and the BOC Petition.⁴ These issues are also the subject of the National Association of Regulatory Commissioner's ("NARUC") Request for a Notice of Inquiry Concerning Access Charges and the Common Carrier Bureau's Working Papers on Access Charge Reform which have both recently been put on public notice for comment by interested parties.⁵

The FCC's review of its current access charge rules and the universal service funding mechanism should not be driven by either the BOC Petition or the Ameritech plan, but rather should be done independently and in the context of the larger issues which they raise. Granting the BOC Petition at this time would introduce a much higher degree of competitive pressure and would serve only to exacerbate existing deficiencies in the current rules. By independently addressing these issues up front the FCC could accommodate the increased degree of competition in a more reasonable and equitable manner.

⁴See, Ameritech's Petition for Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, DA 93-481.

⁵See, In the Matter of NARUC's Request For a Notice of Inquiry Concerning Access Issues, filed June 25, 1993; and Federal Perspectives on Access Charge Reform, CC Bureau Access Reform Task Force, dated April 30, 1993.

III. At Such Time That The FCC Decides To Establish The Necessary Safeguards For BOC Participation in the InterLATA Market, The FCC Should Initiate A Three-Stage Proceeding to Balance The Needs Of All Parties.

While the PaPUC opposes the BOC Petition at this time, at such time that the FCC decides to consider the BOC Petition, the FCC should proceed in three-stages as outlined below to balance the needs of all parties. First, the FCC should solicit comment on the overall ramifications of BOC participation in the interLATA market at both the federal and state levels and additional comment on the safeguards necessary to ensure a "level playing field". This phase would be comparable to a Notice of Inquiry⁶ which the FCC has oftentimes used in the past, and would provide the basis for a comprehensive record for the FCC to consider both the ramifications of BOC entry and the appropriate safeguards necessary to accommodate and balance the concerns of all parties. In this phase, the FCC may notice specific issues for discussion and invite parties to raise and address other issues such as the ramifications resulting from lifting the restriction, the effect upon participants in the various markets including the local exchange, toll, video, wireless, and information services markets, the safeguards necessary to ensure a fully competitive and level playing field in all markets, the impact of recent FCC decisions,

⁶The FCC initially solicited comment on the competitive provision of interstate switched transport through a Notice of Inquiry. See, In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Notice of Proposed Rulemaking and Notice of Inquiry, (CC Docket No. 91-141), Adopted May 9, 1991; Released June 6, 1991.

the effect of new and emerging technologies, the BOCs' commitment to high-quality universal local access service, the nature and extent of competition in the current interexchange market, and the advantages to consumers of BOC entry into the interLATA market. This "information gathering stage" would allow for the development of a comprehensive record identifying all potential ramifications of BOC interLATA participation and thus allowing for a more reasoned analysis of the safeguards necessary to prevent anti-competitive conduct, if BOC participation is indeed in the public interest. A public interest determination could be made in this phase or phase III of the PaPUC's proposal.⁷

Depending upon the FCC's initial findings, the FCC may proceed with a proposed rulemaking; again, affording all parties the opportunity to submit comments and reply comments on the proposed terms and conditions under which BOC participation in the interLATA market will be allowed. This phase would focus on the specific safeguards, terms and conditions proposed by the FCC in its rulemaking.

The PaPUC does not believe the process should stop here, however. It is of critical importance that the process take into account local markets and concerns prior to allowing BOC

⁷Such a public interest analysis would necessarily examine a broader range of issues than the analysis eventually undertaken by the District Court under Section VIII(C) of the decree for contested motions for modification of the decree.

participation in the interLATA market.⁸ The final phase would, therefore, consist of a petition by a particular BOC to provide interLATA service, and would specifically accommodate proposals such as the Ameritech plan.⁹ The final phase would necessarily focus on local competitive conditions relative to the provision of local exchange and intraLATA toll service, in the particular regions in which the BOC provides local exchange service. This would provide critical input on a regional basis directly related to the extent of the local "bottleneck" and, therefore, the extent of the resultant incentive and opportunity for discrimination and anti-competitive conduct.¹⁰ In this third and final phase, the FCC could institute yet other safeguards depending upon actual market conditions, and accept specific BOC proposals to encourage competition. The PaPUC does not believe, however, that the

⁸Local competitive conditions vary considerably between Tier I LEC markets. The degree of competition ranges from none to relatively little competition to a potentially high degree of competition as evidenced by MFS' recent filing with the Maryland Public Service Commission.

⁹See, note 4 supra.

¹⁰During the 1987 Triennial Review, most parties conceded that the extent of the local "bottleneck" and the degree of competition in the local service and intraLATA markets bore directly upon whether or not lifting of the interLATA restriction was appropriate. See, Responsive Comments of the Federal Communications Commission as Amicus Curiae on the Report and Recommendations of the United States Concerning The Line of Business Restrictions Imposed on the Bell Operating Companies By the Modification of Final Judgment, MCI's Response to Recommendations Concerning the Line of Business Restrictions and Related Procedures, and Response of the United States to Comments on its Report and Recommendations Concerning the Line-of-Business Restrictions Imposed on the Bell Operating Companies by the Modification of Final Judgment.

implementation of such plans should be contingent upon removal of the interLATA restriction. Rather, the plans should be first implemented to determine and ensure their effectiveness.

Depending upon the FCC's findings and ultimate determination, the BOC could at that time certify the findings to Judge Greene and request removal of the InterLATA restriction.¹¹

In summary, while the PaPUC opposes the rulemaking at this time because of the reasons discussed in Section 1, infra., at such time as the FCC considers the BOC Petition, the PaPUC does not believe that the adoption of safeguards alone is enough. The PaPUC requests that the FCC use the three-part process outlined in these Comments which would most equitably balance the needs and interests of all parties.

¹¹The PaPUC recognizes that the third phase of its proposal is similar to a proposal by the DOJ that was rejected by the District Court in U.S. v. Western Electric Co., 673 F.Supp. at 543-46 wherein the DOJ advocated that the District Court entertain requests for waivers of the interLATA restriction as soon as state and local regulation is lifted with respect to a particular area or locality. The District Court rejected the DOJ recommendation since repeal of local regulation would not necessarily open the local exchange monopolies to competition and such a process would put the District Court in the untenable position of having to review and scrutinize on an ongoing and unending basis, the effect and purpose of old and new state and local regulation of telecommunications providers all over the country. The District Court, however, went on to say that "... [o]f course, if prima facie showings are made that, for technological or economic as well as legal reasons, competition in local exchange markets is feasible and has, in fact, emerged on a substantial scale, requests for removal of particular restrictions will be both entertained and granted. The PaPUC believes its proposal differs from the DOJ proposal and meets these criteria in two significant respects in that the degree of actual competition would be examined and the FCC, rather than the District Court, would conduct the examination based upon BOC submissions such as the Ameritech proposal.

IV. Conclusion

For the above reasons, the PaPUC believes that the FCC should first address other issues such as access charges and the universal service funding mechanism to accommodate an increasingly competitive environment prior to considering the BOCs' Petition. At such time as the FCC considers the BOCs' Petition, the FCC should proceed in the three-part fashion outlined in these Comments. This three-part process would allow for the fullest level of participation by all interested parties and appropriately weigh and balance the ramifications of BOC entry on both a national and local level to accommodate BOC competitive entry in the most reasonable and equitable manner.

Respectfully submitted,


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Dated: September 2, 1993

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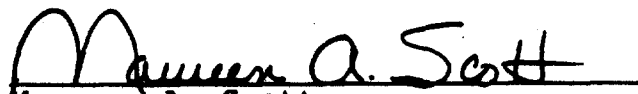
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